



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,290	03/06/2002	Steve J. Mast	19705-00001	7788
7590	07/01/2004		EXAMINER	
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Sq. St. Louis, MO 63102			JOHNSON, RAYMOND B	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 07/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. <i>10/092,290</i>	Applicant(s) <i>Steve Mastelos</i>
	Examiner <i>Johnson, R. B.</i>	Art Unit <i>3653</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02/02/04
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-28 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) 1-8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date *2*
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

OFFCIE ACTION

1. Applicants elections of: the Group I invention (claims 1-8); and species A (Figs 1-6) each with traverse in paper no. 4 filed on 02/02/04 is noted.

The traverse relative to the grouped invention restriction is not persuasive because the traverse does not refute the basis (sections 3-5a of paper no. 3) of the restriction requirement. The restriction requirement is deemed proper. It is maintained and made FINAL.

The traverse relative to the species restriction is not persuasive because applicant have not averred, in any manner, the designated species are not patentably distinct. The restriction requirement of the designated species is maintained, subject to the conditions set forth in section 6 of paper no. 5.

2. Claims 9-28 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.
3. The documents submitted in the Information Disclosure Statement (IDS) have been considered.
4. Claim 5 is objected to because "said transition housing" lacks proper antecedent basis. Claim 1 is objected to because the recited "front" and "rear" adjectives are not defined relative to a datum. Claims 2-8 are dependent upon claim 1 and thus suffer the same objection.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-2, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated/lacking novelty by Midkiff.

See Pit/recess for 72 in Fig. 9 intended use of a claimed apparatus does not define either novel or unobvious structure; 14 main frame; and hydraulic lifts 24, 26.

7. Claims 3-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over IDS #OD (portable pit) in view of Besser.

for
IDS #OD show the claimed structure except ~~the recited towing lift assemblies~~.

Besser shows the recited towing lift assemblies (48, 50, 52, Figs 1, 3, 7 and 8).

It would have been obvious to construct the portable towed pit shown in IDS #OD with the towing assembly of Besser for the purpose of towing said pit because it is taught by Besser.

8. Claims 1-2, 6 and 8 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart et al (IDS #AB) in view of Schramm.

Stewart et al discloses the claimed apparatus except for the recited towing assembly for its portable drive-over hopper. Schramm (16, 16' Figs 1-3) shows the claimed towing assembly.

It would have been obvious to construct Stewart et al portable drive-over hopper with the towing assembly of Schramm for the purpose of towing the drive-over hopper because of the teaching of Schramm.

9. McCauley shows a vehicle drive-over apparatus, 24, 28, 38, 40.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R.B. Johnson whose telephone number is (703) 308-2565. The examiner can normally be reached on Monday thru Thursday from 6:30-9:30 A.M. to 5:00-8:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, E.D. Lillis, can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 3652

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600


Johnson/Vs
May 13, 2004